

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:)
)
EASTERN LIVESTOCK CO., LLC,) Case No. 10-93904-BHL-11
)
Debtor.)

**MOTION TO APPROVE COMPROMISE AND SETTLEMENT
WITH THOMPSON BEEF, INC. PURSUANT TO RULE 9019**

Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, James A. Knauer, as chapter 11 trustee (the "Trustee") for Eastern Livestock Co., LLC (the "Debtor"), by counsel, hereby files this motion (the "Settlement Motion") requesting the Court's approval of a compromise and settlement of claims between the Trustee and Thompson Beef, Inc. ("Thompson Beef") pursuant to the terms and conditions set forth in the Settlement Agreement and Mutual Release substantially in the form attached hereto as **Exhibit A** (the "Settlement Agreement"). In support of this Settlement Motion, the Trustee respectfully represents the following:

Introduction and Background

1. Certain petitioning creditors commenced the above-captioned chapter 11 case (the "Chapter 11 Case") against the Debtor on December 6, 2010, by filing an involuntary petition for relief under chapter 11 of title 11 of the United States Code. This Court entered the Order for Relief in An Involuntary Case and Order to Complete Filing [Doc. No. 110] on December 28, 2010.

2. On December 27, 2010, the Court entered the Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee [Doc. No. 102] pursuant to 11 U.S.C. § 1104.

3. On January 25, 2012, the Trustee filed the Trustee's Motion to Approve Certain Preference Avoidance Protocols and Terms of Settlement [Doc. No. 977] (the "Preference Protocol Motion"). The Court entered its Order Granting Trustee's Motion to Approve Certain Preference Avoidance Protocols and Terms of Settlement on February 15, 2012 [Doc. No. 1035] (the "Preference Protocol Order"), pursuant to which the Court authorized the Trustee to settle the Trade Preferences¹ in the sums of the Estimated Net Exposure without further order of the Court.

4. Based on his investigation, the Trustee has concluded that Thompson Beef received not less than \$100,008.00 in transfers from the Debtor (collectively, the "Transfers"). On March 27, 2013, the Trustee made demand on Thompson Beef for avoidance and recovery of the Transfers (the "Preference Claim") and offered to settle the Preference Claim in the sum of \$35,000.00, representing Thompson Beef's Estimated Net Exposure as calculated by the Trustee.

5. The Trustee commenced Adversary Proceeding No. 12-59138 against Thompson Beef on December 12, 2012 to avoid and recover the Transfers. Subsequent to December 12, 2013, Thompson Beef has provided information to the Trustee that arguably reduces Thompson Beef's Estimated Net Exposure to the sum of \$30,000.00.

¹ Capitalized terms not otherwise defined herein shall have the meaning set forth in the Preference Protocol Motion.

6. To avoid the cost, expense, and delay of litigation, Thompson Beef is willing to make immediate payment of \$30,000.00 (the "Settlement Amount") in satisfaction of the Preference Claim, provided the Court enters a final, non-appealable order approving this Settlement Motion (the "Settlement Order"). Thompson Beef has, in fact, tendered this amount to the Trustee to be held in a trust account controlled by the Trustee while this matter is pending.

7. In the exercise of his sound business judgment, the Trustee has determined that a settlement of the Preference Claim in the Settlement Amount is in the best interests of the Debtor's estate and its creditors.

The Settlement

8. The Trustee requests that the Court approve the compromise and settlement of claims between the Trustee and Thompson Beef pursuant to the terms and conditions set forth in the Settlement Agreement. The Trustee is seeking court approval of the Settlement Agreement because the Settlement Amount is less than the sum of the Estimated Net Exposure as approved by the Preference Protocol Order.

Basis for Relief

9. Pursuant to Bankruptcy Rule 9019(a), this Court has authority to approve a compromise or settlement after notice and opportunity for a hearing. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d 421, 426 (7th Cir. 2007). The Seventh Circuit has offered the following guidance to courts in making such determinations:

The linchpin of the “best interests of the estate” test is a comparison of the value of the settlement with the probable costs and benefits of litigating. Among the factors the court considers are the litigation's probability of success, complexity, expense, inconvenience, and delay, “including the possibility that disapproving the settlement will cause wasting of assets.”

In re Doctors Hosp. of Hyde Park, Inc., 474 F.3d at 426 (citations omitted).

10. Although the Trustee believes there is legal and factual support for the Preference Claim, settlement avoids the costs, expense, delay, and uncertainties of litigation. Litigation creates additional costs and expenses for the Debtor's estate and will thereby further deplete the estate. When evaluating the proposed settlement, the Trustee considered (i) the expenses the Debtor's estate would incur in litigating the Preference Claim, (ii) the probability of success in prosecuting the Preference Claim in light of the asserted defenses, and (iii) the best interests of the Debtor's estate and its creditors.

11. Pursuant to the exercise of his sound business judgment, the Trustee believes that the compromise and settlement reflected in the proposed Settlement Agreement is fair and equitable and in the best interests of the estate.

12. Notice of this Settlement Motion will be provided to all creditors, the United States Trustee, all counsel of record, and any other entity that the Court may direct, as provided in Bankruptcy Rules 2002 and 9019.

WHEREFORE, if no objections to this Settlement Motion are filed, the Parties request that the Court enter the Settlement Order approving the Settlement Agreement. A proposed form of order is attached as **Exhibit B**. If any objections to this Settlement Motion are filed, the parties request that this Settlement Motion and any timely filed objection be scheduled for hearing by the Court on the earliest date that is available and

convenient to the Court. The Trustee requests that any notice of this motion include language that any objection to this Settlement Motion set forth with specificity any claim that the objecting party has to the Settlement Amount.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2013, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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